

DOCKET FILE COPY ORIGINAL

COPY

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

NOV 29 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for Local)	CC Docket No. 94-1
Exchange Carriers)	
)	
Interexchange Carrier Purchases of Switched)	CCB/CPD File No. 98-63
Access Services Offered by Competitive Local)	
Exchange Carriers)	
)	
Petition of U S WEST Communications, Inc.)	CC Docket No. 98-157
for Forbearance from Regulation as a Dominant)	
Carrier in the Phoenix, Arizona MSA)	

**Reply Comments of the
MINNESOTA CLEC CONSORTIUM**

Michael J. Bradley
Richard J. Johnson
Moss & Barnett
A Professional Association
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for Local)	CC Docket No. 94-1
Exchange Carriers)	
)	
Interexchange Carrier Purchases of Switched)	CCB/CPD File No. 98-63
Access Services Offered by Competitive Local)	
Exchange Carriers)	
)	
Petition of U S WEST Communications, Inc.)	CC Docket No. 98-157
for Forbearance from Regulation as a Dominant)	
Carrier in the Phoenix, Arizona MSA)	

REPLY COMMENTS OF MINNESOTA CLEC CONSORTIUM

The following Reply Comments by the Minnesota CLEC Consortium ("MCC") are submitted in further response to the Further Notice of Proposed Rulemaking released August 27, 1999 (the "FNPRM"). The MCC members are small competitive local exchange carriers ("CLECs") that are either currently providing or are implementing facilities based competitive local exchange service in Minnesota, including a number of smaller, rural communities.

The Comments filed in this docket clearly establish the following points.

1. IXCs Cannot Unilaterally Refuse To Accept CLEC Access Services.

Section 201(a) compels "every common carrier" to furnish "communication service upon reasonable request therefor ...". Section 202(a) prohibits "unreasonable discrimination ... in charges ... or services" that will "subject ... [a] class of persons ... to ... undue or unreasonable prejudice or disadvantage." In their comments, AT&T, Sprint, and MCI did not present any

significant legal authority to the contrary.¹ Further, permitting IXC's to unilaterally refuse to provide service, particularly the largest, national IXC's already serving a geographic area, would discourage local competition – particularly in rural areas – and cause severe and direct harm to rural customers.

Rural consumers are especially disadvantaged and vulnerable to this practice, since the high cost of providing service to them typically restricts choices for service providers in the first instance. A CLEC will have even less motivation to provide a choice of service provider in rural communities if there is a greater risk of discriminatory treatment by IXC's.

Further, as several parties noted, Section 208 provides a mechanism to resolve an IXC's concerns regarding a CLEC's access charges.² There is no legal or policy basis to abandon these existing tools in favor of an approach leaving service obligations at the discretion of IXC's.

2. A Benchmark That Reflects The Characteristics Of The CLECs Should Be Adopted.

Many commenters persuasively urge the adoption of a benchmark to establish presumptively reasonable access rates, with carriers having the ability to justify rates above the benchmark by demonstrating costs above the benchmark.³

Use of a benchmark that either employs an overall average of industry rates or the rates of the incumbent LEC in the area is unreasonable for CLECs serving rural areas. This is particularly true when the incumbent LEC is a large Price Cap LEC, with access rates that reflect

¹ AT&T Comments on LEC Pricing Flexibility FNPRM, pp. 27-32; Comments of Sprint Corporation, pp. 14-28; and MCI WorldCom Comments, pp. 18-22.

² Comments of the Association for Local Telecommunications Services (ALTS), pp. 18-19; Comments of Cox Communications, Inc., pp. 4-5; and Organization for the Promotion and Advancement of Small Telecommunications Companies, pp. 4-5.

³ Comments of Rural Independent Competitive Alliance (RICA), pp.24-25; Comments of Telecommunications Resellers Association, pp. 9-13; Comments of McLeodUSA Telecommunications Service (McLeod), pp. 4-5; Comments of Allegiance Telecom, p. 12; Comments of CTSA, pp. 18-19.

the lower cost of serving dense, urban areas.⁴ Notwithstanding the desires of the IXC's to minimize access charges at every opportunity, there is no basis to either expect or require the access rates of small CLECs, particularly those serving rural markets, to meet the access rates of large incumbent LECs. Rather, the access rates of the Price Cap LECs are based on their economies of scale and averaged costs of serving lower cost, denser urban areas. Further, the rate comparisons offered by AT&T are inaccurate and ignore non-usage based charges that incumbent LECs impose on IXC's.

The MCC encourages the Commission to adopt an easily obtainable benchmark which is most representative of the CLEC's operating characteristics. For CLECs affiliated with an incumbent LEC, the benchmark would be based on either the individual access rate of the affiliated incumbent or the NECA rate, increased or decreased by the NECA settlement. For other CLECs, the NECA rate could provide an appropriate benchmark, as urged by several parties.⁵ Rates at or below the benchmark would be presumed to be reasonable. The CLEC should have the opportunity to justify higher rates in response to a complaint by an IXC.

AT&T's proposal for the use of a "permissive" tariff mechanism⁶ should be rejected as excessively burdensome to CLECs and the Commission. It would require CLECs to submit and the Commission to review historical and projected service cost studies and estimates of the tariff's effects on traffic and revenues as specified in Section 61.38 and other showings required in Parts 32, 36, 64 and 69.⁷

⁴ Comments of Competitive Communications Group, LLC (CCG), p. 8.

⁵ Comments of McLeod, pp. 4-5; Comments of Winstar Communications, Inc., pp. 4-5.

⁶ Comments of AT&T at pp. 30-31.

⁷ *Id.* at p. 31, n. 54.

3. An “Escape Valve” Leading To Additional Charges To End Users For Long Distance Usage Should Not Be Adopted.

Most of the commenters, including the MCC, recommend against the adoption of an “escape valve” under which CLECs desiring to charge more than the benchmark access rate would recover the difference from their local service customers.⁸ It would be inappropriate to impose additional access charges on end users in order to allow IXCs to avoid payment of reasonable and lawful charges. Further, imposing deaveraged charges for long distance usage based on the identity of the LEC providing service would be inconsistent with both the letter and the spirit of Section 254(g), which unequivocally requires uniform long distance rates. Rather, the solution is to establish an appropriate benchmark, discussed above, which sets reasonable access rates for CLECs.

⁸ Comments of CCG, pp. 12-13; Comments of ALTS, pp. 36-38; and Comments of RICA, p. 22.

CONCLUSION

In order to foster competition and consumer choice in local service, IXC's cannot be permitted to selectively refuse CLEC access services. Current refusals by IXC's to pay validly tariffed interstate access charges are crippling local competition and merit expeditious action by the Commission. Establishment of a benchmark that fairly represents the characteristics of rural CLEC's and their customers will define presumptively reasonable rates. Rates above that benchmark should be justifiable on a case-by-case basis.

The Minnesota CLEC Consortium appreciates the opportunity to submit these Reply Comments.

Dated: November 29, 1999

Respectfully submitted,

MOSS & BARNETT
A Professional Association

By Michael Bradley
Michael J. Bradley
Richard J. Johnson
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129
(612) 347-0275

Attorneys on behalf of Minnesota CLEC
Consortium

296804

AFFIDAVIT OF SERVICE

Tina M. Pauls, being first duly sworn on oath, deposes and states that on the 29th day of November, 1999, copies of the Minnesota CLEC Consortium Reply Comments Regarding Access Charge were hand delivered or mailed by United States first class mail, postage prepaid thereon, to the following:

Richard Lerner
Deputy Division Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A221
Washington, DC 20554

Tamara Preiss
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A221
Washington, DC 20554

Patricia D. Kravtin
Scott C. Lundquist
Economics and Technology, Inc.
One Washington Mall
Boston, MA 02108-2617
Economic Consultants for Ad Hoc
Telecommunications Users Committee

Colleen Boothby
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
Counsel for Ad Hoc Telecommunications
Users Committee

Robert T. McCausland
Mary C. Albert
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, Texas 75207-3118

Patrick Donovan
Kernal Hawa
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for Allegiance Telecom, Inc.

Carolyn C. Hill
Alltel Communications, Inc.
601 Pennsylvania Avenue, NW, Suite 720
Washington, DC 20004

Jonathan Askin, Vice President - Law
Emily Williams, Senior Attorney
The Association for Local
Telecommunications Services
888 17th Street, NW, Suite 900
Washington, DC 20006

Jonathan E. Canis
Charles M. Oliver
Enrico Soriano
Kelley Drye & Warren, LLP
1200 19th Street, NW, 5th Floor
Washington, DC 20036
Attorneys for The Association for Local
Telecommunications Services

Albert H. Kramer
Robert F. Aldrich
Dickstein Shapiro Morin & Oshinsky, LLP
2101 L Street, NW
Washington, DC 20037-1526
Attorneys for the American Public
Communications Council

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
AT&T
295 North Maple Avenue, Room 1135L2
Basking Ridge, NJ 07920

Joseph DiBella
Michael E. Glover
Bell Atlantic
1320 North Courthouse Road, 8th Floor
Arlington, VA 22201

M. Robert Sutherland
Richard M. Sbaratta
Bellsouth Corporation
1155 Peachtree Street, NE, Suite 1700
Atlanta, GA 30309-3610

Rachel J. Rothstein
Brent M. Olson
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Danny E. Adams
Robert J. Aamoeth
Joan M. Griggin
Kelley Drye & Warren, LLP
1200 19th Street, Suite 500
Washington, DC 20036
Attorneys for Cable & Wireless USA, Inc.

Douglas A. Dawson, Principal
Competitive Communications Group, LLC
Calvert Metro Building
6811 Kenilworth Avenue, Suite 302
Riverdale, MD 20737

Carol Ann Bishoff, EVP/General Counsel
Competitive Telecommunications
Association
1900 M Street, NW, Suite 800
Washington, DC 20036

Robert J. Aamoeth
Joan M. Griffin
Kelley Drye & Warren, LLP
1200 19th Street, Suite 500
Washington, DC 20036
Attorneys for Competitive
Telecommunications Association

Christopher A. Holt, Asst. General Counsel
Regulatory and Corporate Affairs
CoreComm Limited
110 East 59th Street, 26th Floor
New York, NY 10022

Stuart Polikoff
OPASTCO
21 Dupont Circle, NW, Suite 700
Washington, DC 20036

James L. Casserly
Ghita J. Harris-Newton
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, PC
701 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20004
Attorneys for CoreComm Limited

Laura H. Phillips
J.G. Harington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave, NW, Suite 800
Washington, DC 20036
Attorneys for Cox Communications, Inc.

Andrew D. Lipman
Tamar E. Finn
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for CTSI, Inc.

Russell M. Blau
Kernal M. Hawa
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
Counsel for Focal Communications Corporation and Hyperion Telecommunications, Inc. d/b/a
Adelphia Business Solutions

George N. Barclay, Associate General Counsel
Personal Property Division
Michael J. Ermer, Senior Asst General Counsel
Personal Property Division
General Services Administration
1800 F Street, NW, Room 4002
Washington, DC 20405

Snively King Majoros O'Connor & Lee, Inc.
1220 L Street, NW, Suite 410
Washington, DC 20005
Economic Consultants for General Services
Administration

Gail L. Polivy
GTE Service Corporation
1850 M Street, NW, Suite 1200
Washington, DC 20036

Thomas R. Parker
GTE Service Corporation
600 Hidden Ridge, MS HQ-E03J43
P.O. Box 152092
Irving, TX 75015-2092

Gregory J. Vogt
William B. Baker
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006
Attorneys for GTE

Susan M. Eid
Richard A. Karre
MediaOne Group, Inc.
1919 Pennsylvania Avenue, NW, Suite 610
Washington, DC 20006

Alan Buzacott
Henry G. Hultquist
MCI Worldcom, Inc.
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Kenneth A. Kirley
Associate General Counsel
McLeodUSA Telecommunications Services, Inc.
400 S. Highway 169, No. 750
Minneapolis, MN 55426

Kent F. Heyman, Senior VP/General Counsel
Scott A. Sarem, Assistant VP, Regulatory
Richard E. Heater, Assistant VP, Legal
MGC Communications, Inc.
3301 N. Buffalo Drive
Las Vegas, NV 89129

Michael J. Bradley
Richard J. Johnson
Moss & Barnet
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129

Margot Smiley Humphrey
Koteen & Naftalin, LLP
1150 Connecticut Avenue, NW, Suite 1000
Washington, DC 20036-4104
Counsel for National Rural Telecom Association

L. Marie Guillory
Daniel Mitchell
The National Telephone Cooperative Association
4121 Wilson Blvd, Tenth Floor
Arlington, VA 22203-1801

Lynda L. Dorr, Secretary to the Commission
The Public Service Commission of Wisconsin
610 North Whimsey Way
Madison, WI 53707

William L. Fishman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Counsel for RCN Telecom Services, Inc.

Alfred G. Richter, Jr.
Roger K. Toppins
Michael J. Zpevak
Thomas A. Pajda
SBC Communications, Inc.
One Bell Plaza, Room 3003
Dallas, TX 75202

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, NW, 11th Floor
Washington, DC 20036

Robert M. Halpern
Crowell & Moring, LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Attorneys for the State of Alaska

John W. Katz, Esquire
Special Counsel to the Governor
Director, State-Federal Relations
Office of the State of Alaska
444 North Capitol Street, NW, Suite 336
Washington, DC 20001
Of Counsel for the State of Alaska

Lawrence G. Malone, General Counsel
Public Service Commission of the State of
New York
Three Empire State Plaza
Albany, NY 12223-1350

Mr. Micheal Wilson
Mr. John Mapes
Department of Commerce And Consumer
Affairs
State of Hawaii
250 South King Street
Honolulu, Hawaii 96813

Herbert E. Marks
Brian J. McHugh
Squire, Sanders & Dempsey, LLP
1201 Pennsylvania Avenue, NW
P.O. Box 407
Washington, DC 20044

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW, Suite 701
Washington, DC 20006
Attorneys for Telecommunications Resellers Association

Edward B. Krachmer, Regulatory Counsel
Teligent, Inc.
8065 Leesburg Pike, Suite 400
Vienna, VA 22182

Brian Conboy
Thomas Jones
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036
Attorneys for Time Warner Telecom

David A. Irwin
Irwin, Campbell & Tannenwald, PC
1730 Rhode Island Avenue, NW, Suite 200
Washington, DC 20036-3101
Counsel for Total Telecommunications Services, Inc.

Jeffrey Brueggeman
US West, Inc.
1801 California Street
Denver, CO 80202

John H. Harwood II
Samir Jain
David M. Sohn
Julie A. Veach
Dan L. Poole
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC 20037-1420
Counsel for US West, Inc

Lawrence E. Sarjeant
Linda Kent
Keith Townsend
John Hunter
Julie E. Rones
United States Telephone Association
1401 H Street, NW, Suite 600
Washington, DC 20005

Danny E. Adams
Joan M. Griffin
Enrico Soriano
Kelley Drye & Warren, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Attorneys for Winstar Communications, Inc

Russell C. Merberth
Lawrence A. Walke
Winstar Communications, Inc.
1615 L Street, NW, Suite 1260
Washington, DC 20036

International Transcription Service
1231 20th Street, NW
Washington, DC 20036

SWORN TO BEFORE ME this
29th day of November, 1999


Tina M. Pauls


NOTARY PUBLIC

